



GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

JAN 06 2015

ORDER OF THE STATE ENGINEER

For Permanent Change Application Number 53-1726 (a40209)

Permanent Change Application Number 53-1726 (a40209) in the name of The Winn Family Trust, was filed on September 30, 2014, to change the points of diversion, places of use, and uses of 200.00 acre-feet (af) of water as evidenced by Water Right Number 53-1726. Heretofore, the water has been diverted from the following points located: (1) Well - North 10 feet and West 2677 feet from the E $\frac{1}{4}$ Corner of Section 25, T12S, R1W, SLB&M (existing 16-inch well, 273 feet deep); (2) Well - South 1187 feet and West 1345 feet from the NE Corner of Section 36, T12S, R1W, SLB&M (existing 16-inch well, 205 feet deep). The water has been used for the irrigation of 359.8 acres (sole supply of 50.00 acres) from April 1 to October 31. The water has been used in all or portion(s) of Sections 25 & 36, T12S, R1W, SLB&M.

Hereafter, it is proposed to divert 200.00 acre-feet of water from a well located: North 87 feet and East 1346 feet from the S $\frac{1}{4}$ Corner of Section 4, T12S, R1E, SLB&M (existing 12-inch well, 770 feet deep, drilled in 2001). The water is to be used for year-round commercial purposes in a hydroponic greenhouse. The place of use of the water is being changed to all or portion(s) of Section 36, T11S, R1W, SLB&M.

Notice of the application was published in The Times-News on October 22 and 29, 2014, and protests were received from Mona Irrigation Company and Mona City. A hearing was not held.

Mona City expresses concern that this change will negatively impact its existing well rights and create a greater demand on the localized aquifer system. The city also requests the State Engineer clearly limit the application to historical limits.

Mona Irrigation Company is concerned this change will directly interfere and impair its existing ground water rights. The proposed well is directly up-gradient to the company's wells. The company also questions the historical beneficial use of the water and asks the State Engineer to investigate the underlying use to ensure no enlargement occurs if this change is allowed. The conversion of the use of water from the irrigation season to year round diversion is also of great concern to the company and the impact that may occur to its rights.

A response submitted by applicant states Houweling Utah Property, Inc., has entered into an agreement with the applicant to purchase this water right. If the change is approved the water will be used for a commercial greenhouse project located near Mona, Utah. Houweling has hired two consultants to evaluate the potential for interference. The results reported by the consultants showed no interference with the city well and a potential draw-down of approximately two to five feet in the city and irrigation company wells. The response further explains the economic development opportunity this project has for both Juab County and the State of Utah, while continuing to support the agricultural nature of Juab County.

This change application is filed on a segregated portion of Water Right 53-96, which is a certificated water right historically used for the supplemental irrigation of lands west of the airport that is located on the western edge of Nephi, Utah. It appears some irrigation has occurred in recent years in the heretofore location. The applicant is cautioned that a right must continue to be used. If a seven year period of non-use occurs, the right may be the subject of a forfeiture action in court. When a water right, or a portion of a right, is the subject of a change application, an equivalent amount of historical use must permanently cease to accommodate the new proposed use. A change application cannot enlarge the historical limits of a water right.

On November 15, 1995, the Northern Juab Valley Groundwater Management Plan was adopted. The intent of the plan is to provide specific management guidelines under the statutory provisions of Title 73 of the Utah Code. The heretofore and hereafter locations included in this application are within the plan area. This change meets the conditions set forth by the plan to be considered for approval.

It is noted by the State Engineer that the point of diversion listed on the original signed application and application map reflect the well is located **North 876** feet. However, a corrected copy of the application was created by the Division and reflects the well is located **North 87** feet. The correct location, as clarified by the applicant, is **North 876** feet. The State Engineer is of the opinion that this is a typographical error that can be corrected without the need to republish the application.

In evaluating applications that propose to change the nature of use of a water right, the State Engineer believes it is appropriate to examine the rates and amounts of hydrologic depletion associated with the historical water use as compared to the proposed use to assure that there is no enlargement of the underlying water right. In this case, it is believed that the historical water uses would have incurred the following rates and amounts of hydrologic depletion:

<u>Prior</u> <u>Beneficial Use</u>	<u>Allowed</u> <u>Diversion</u>	<u>Rate of</u> <u>Depletion</u>	<u>Amount of</u> <u>Depletion</u>
<u>Irrigation: 50.0 acres</u>	<u>200.0 acre-feet</u>	<u>54.75%¹</u>	<u>109.5 acre-feet</u>
Totals:	200.0 acre-feet		109.5 acre-feet

In no case can the proposed use exceed historical limitations of the water right.

The State Engineer is of the opinion that every water right has associated with it a priority date. The new well and any impacts to the surrounding hydrologic system, would have the priority of the change application, but the water right would still retain the underlying priority for basin-wide issues. The priority of a change application may affect the ability of a water right holder to

¹ *Consumptive Use of Irrigated Crops in Utah*, Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October, 1994, Table 25, Nephi Station, p344. The benchmark crop for the referenced calculation is alfalfa, the most typical and consumptive crop evaluated in the study (26.25 inches or 2.19 feet. 2.19 feet / 4.0 feet duty = 54.75%).

divert water based on the change application if water is not available at the new diversion location without impairing existing rights. For localized interference, diversions under this change application could have a priority as late as September 30, 2014. Utah Code Ann. §73-3-3(2)(b) states an approved change may not be made if it impairs a vested water right without just compensation. If interference occurs from pumping the proposed well, and the impaired party can demonstrate that the impact has occurred, the applicants may be required to replace the water impacted, limit pumping, or in some other way compensate the impaired party as determined by a court of competent jurisdiction.

Utah Code Ann. §73-3-3(2)(a), states that any person entitled to the use of water may, through the change application process, make a permanent change to an existing water right. Additionally, §73-3-3(5)(a) directs the State Engineer to follow the same procedures for a permanent change application as provided by statute for applications to appropriate water. The State Engineer must approve a change application if it meets the provisions of §73-3-3 and criteria listed in §73-3-8(1). The well under this project is an existing well; therefore, the delivery of water under this application appears feasible provided certain conditions are observed.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and/or no enlargement occurs.

It is, therefore, **ORDERED** and Permanent Change Application Number 53-1726 (a40209) is hereby **APPROVED** subject to prior rights and the following conditions:

- 1) This change application is limited to the amount of water necessary to deplete 109.5 acre-feet of water annually up to a total diversion of 200.00 acre-feet. The change application is to be used for commercial use in hydroponic greenhouses. In no case can the proposed uses exceed the historical diversion and depletion limits established under this right. The applicant shall maintain sufficient diversion records to ensure no enlargement of the underlying water right occurs.
- 2) To accommodate the approval of this permanent change application, the use of 200.00 acre-feet of water to be used for irrigation of 50.00 acres from April 1 to October 31 at the historic points of diversion and place of use must cease.
- 3) The applicant(s) shall install and maintain measuring and totalizing recording devices to meter all water diverted from all sources pertaining to this application and **shall annually report this data to the Division of Water Rights Water Use Program.**

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits. (UCA 73-1-4).

As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before **January 31, 2020**, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.

Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

ORDER OF THE STATE ENGINEER
Permanent Change Application Number
53-1726 (a40209)
Page 5

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 6th day of January, 2015.


Kent L. Jones, P.E. State Engineer

Mailed a copy of the foregoing Order this 6th day of January, 2015 to:

The Winn Family Trust
Clinton J. Winn and Linda L. Winn, Trustees
PO Box 304
Nephi, UT 84648

Mona Irrigation Company
c/o Scott H. Martin, Attorney
10 Exchange Place, 11th Floor
Salt Lake City, UT 84111

Mona City
c/o Gregory Newton
PO Box 69
Mona, UT 84645

Division of Water Rights
Water Use Program

BY: 

Sonia R. Nava, Applications/Records Secretary